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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,714	01/12/2004	Lisa Ann Heim	HLA-32120	9753
22202 7590 06/11/2007 WHYTE HIRSCHBOECK DUDEK S C 555 EAST WELLS STREET SUITE 1900 MILWAUKEE, WI 53202			EXAMINER REDDING, DAVID A	
			ART UNIT 1744	PAPER NUMBER
			MAIL DATE 06/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/755,714	Applicant(s) HEIM, LISA ANN	
	Examiner David A. Redding	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-6, 14-18 in the reply filed on 3/9/07 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 16 are considered to be process limitations and therefore it is unclear as to how such limitations structurally define the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,5-7, are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko).

Shimko discloses a hand-held wet/dry vacuum cleaner comprising a handle section 22 which includes the cleaning fluid reservoir 16 and is selectively mounted onto the motor housing 18 by means of latch 19, the cleaning fluid tank 16 being made from a clear plastic material (see col. 3, lines 51 thru col. 4, line 7; figure 3). The pump 32 and cleaning fluid tube 58 connected to a spray nozzle 30 are positioned within the handle section 22. The cleaner further comprises a main section designated motor housing 18 comprising an electric motor (190, 74), and a suction fan 72. A dirty fluid reservoir 20 is located adjacent to the motor housing 18. Since the actuator can be repeatedly compressed causing a pulsating discharge of fluid the cleaner is capable of providing "pulsating spray". Also, figure 1 shows the cleaner to have a "triangular profile".

Shimko differs from the claims in that the pump 32, tube 58, and nozzle 30 are positioned in the handle section 22 instead of the main section 18. Also, the dirty fluid reservoir 20 is adjacent to the main section 18 and not integral, as claimed. Further, Shimko discloses only one tube 58 connected to the housing, not a plurality as claimed.

Regarding the position of the pump 32, tube 58, nozzle 30, In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held

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unpatentable because shifting the position of the starting switch would not have modified the operation of the device.)

Since re-positioning the pump 32, tube 58, nozzle 30 into the main section 18 instead of the handle section 22 would not alter the operation of the Shimko cleaner, the claims are considered to be obvious in view of Shimko.

In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.") Thus, making the dirty fluid reservoir 20 in Shimko integral with the main section 18 is considered an obvious design choice.

Regarding the claimed plurality of houses connected to the nozzle, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that

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mere duplication of parts has no patentable significance unless a new and unexpected result is produced.) Since adding more tubes to the nozzle 30 in Shimko would expectedly merely increase the flow of fluid doing so is considered to be obvious.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko).

Bags are routinely sold with articles as promotional items and as a convenience to the buyer. Accordingly, it would have been obvious to one skilled in the art that a bag with a draw-string be provided with the cleaner in Shimko for storing the cleaner from a hook or handle and as a sales promotion from the seller to the buyer. Providing a support surface is considered to be intended use and of no patentable weight.

Neoprene is considered to be an obvious material of choice.

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko).

Shimko discloses a hand-held wet/dry vacuum cleaner comprising a handle section 22 which includes the cleaning fluid reservoir 16 and is selectively mounted onto the motor housing 18 by means of latch 19, the cleaning fluid tank 16 being made from a clear plastic material (see col. 3, lines 51 thru col. 4, line 7; figure 3). The pump 32 and cleaning fluid tube 58 connected to a spray nozzle 30 are positioned within the handle section 22. The cleaner further comprises a main section designated motor housing 18 comprising an electric motor (190, 74), and a suction fan 72. A dirty fluid reservoir 20 is located adjacent to the motor housing 18.

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Neoprene is considered to be an obvious material of choice.


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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The USP reference to Cerri discloses the common practice of providing bags with cleaners for holding accessories.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran-Piazza can be reached on 571-272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David A Redding
Primary Examiner
Art Unit 1744

DAR